

**EXHIBIT 3 TO  
STATEMENT OF FACTS**

1           IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
2           BEFORE THE TRADEMARK TRIAL AND APPEALS BOARD  
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4       SEXY HAIR CONCEPTS LLC,           )

)

5                   Opposer,           )

)

6               vs.                   )   Opposition No. 125, 739

)   (SO SEXY)

7       V SECRET CATALOGUE, INC.,       )

)

8                   Applicant.       )

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15                   Deposition of Donna Federici, taken  
16       on behalf of Opposition, at 9232 Eton Avenue,  
17       Chatsworth, California, beginning at 10:01 a.m.  
18       and ending at 5:26 p.m. on Wednesday,  
19       September 29, 2004, before MEGAN M. GROSSMAN,  
20       Certified Shorthand Reporter No. 12586.  
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1 APPEARANCES:

2  
3 For Opposition:

4 BALLARD SPAHR ANDREWS & INGERSOLL, LLP

By: Roberta Jacobs-Meadway, Esq.

5 1735 Market Street

51st Floor

6 Philadelphia, PA 19103-7599

(215) 864-8201

7  
8 For Defendant:

9 COLUCCI & UMANS

By: Frank J. Colucci, Esq.

10 101 East 52nd Street

New York, NY 10022

11 (212) 935-5700

12  
13 Also Present:

14 Mark Stiller (Joined proceedings at 4:28 p.m.)

1 actually take the hair out, brush it out like this  
2 (indicating), and spray the product on it. You didn't  
3 have to squish it on and you didn't have to wipe your  
4 hands. You could just spray it on and then just blow the  
5 hair dry with it in.

6 So it was the very first one in our industry.  
7 Subsequently, of course, a couple people have launched  
8 similar types of products. But it was the very first  
9 time.

10 Also, this was the first use of this type of  
11 container (indicating). Again, a way to differentiate it  
12 because so many aerosol -- you are limited to what the  
13 can producer can do. So this type of can was the first  
14 time it was used (indicating).

15 MS. JACOBS-MEADWAY: I would ask the reporter to  
16 mark the Straight Sexy Hair Straight Arrow product as  
17 Opposer's Exhibit 31.

18 (Opposer's Exhibit Number 31 was marked for  
19 identification by the shorthand reporter.)

20 MR. COLUCCI: I object to Opposer's Exhibit 31.  
21 We have not received a sample of this product.

22 MS. JACOBS-MEADWAY: You have representations of  
23 it.

24 Q Ms. Federici, in connection with your marketing  
25 responsibilities, I believe you mentioned sampling

1 earlier. Can you explain to me what sampling is?

2 A Sampling is a form of advertising. It's a form  
3 of goodwill or PR. When you can supply a product to  
4 somebody free of charge in different forms and formats,  
5 it gives the opportunity of the brand recognition and it  
6 gives the opportunity of them trying it before they  
7 physically have to buy it.

8 And we have done an awful lot of sampling and  
9 on-pack sampling and events where we just sample.  
10 Charity events where they have asked for large donations  
11 of sample-size products to give to different people.

12 But sampling is a way to allow somebody to  
13 certainly test your product to see if they like it, but  
14 it's a way of getting your name out. And a lot of brand  
15 recognition.

16 Q What do you mean by on-pack sampling?

17 A For example, Spray and Play is a very popular  
18 product. It already has a very big customer base. I  
19 would take a lesser-known product or a product I was  
20 about to launch and put a sample of it, a small gel,  
21 attach it to it to give it away to consumers as a value  
22 added, a way to try.

23 Q You mentioned trade shows, I believe?

24 A Yes.

25 Q Does Sexy Hair Concepts attend any trade shows?

1 Concepts devotee.

2 So we sent them all the products. We supply  
3 them on the sets. We give them the products for the  
4 movies. And we pretty much woo that whole group.

5 Q Has the Sexy Hair product appeared on any  
6 television shows?

7 A Yeah. A lot of television shows. It appears  
8 two ways. Sometimes you will see it in a set. Like "Sex  
9 in the City" there was a time when Sarah walked into a  
10 salon and there my product was mysteriously sitting on  
11 the shelf.

12 That's because the stylist on the set took hers  
13 off the station and put it up there for me. So those  
14 kinds of things happen.

15 However, then there are the other television  
16 appearances that come as a result of branding Michael  
17 O'Rourke. That was one of the key brands that I  
18 established when I first came in.

19 Our industry is led by opinionators and they  
20 only listen to their own -- hairdressers do. So,  
21 subsequently, I put an awful lot of time and energy into  
22 getting a lot of PR for Michael and also because the  
23 production companies of shows heard of him.

24 He was then asked to come and be featured on  
25 shows. So we have done a lot of the "Good Morning" shows

1 all over the country. And we have done a lot of national  
2 shows where Michael is the guest.

3 So there are two ways.

4 Q We have a couple of tapes, and I am going to put  
5 a couple on so you can identify them for us.

6 MS. JACOBS-MEADWAY: Off the record.

7 (Discussion off the record.)

8 BY MS. JACOBS-MEADWAY:

9 Q Ms. Federici, what tape do you have?

10 A This is a tape of Michael O'Rourke appearing on  
11 the national show "The Other Half" with Dick Clark and  
12 people.

13 Q Does that have a Production Number on the label?  
14 That is SHC 2363. If you would play that for us? And  
15 then explain to me what it shows.

16 A (Witness complies).

17 (Videotape played.)

18 THE WITNESS: This is the logo of "The Other  
19 Half" and coming on the screen you see Michael. And now  
20 you see Dick Clark and Danny Bonaduce.

21 These are two-minute makeovers where we were  
22 asked to come on and change her hair and life in two  
23 minutes. So it was designed to do straight to curly hair  
24 in two minutes and curly to straight hair in two minutes  
25 utilizing products and tools and showing the consumer how

1 to do it.

2 You will notice that the logo stays at the  
3 bottom of that (indicating).

4 MS. JACOBS-MEADWAY: I would ask the reporter to  
5 mark the video bearing Production Number SHC 2363 as  
6 Opposer's Exhibit 32.

7 (Opposer's Exhibit Number 32 was marked for  
8 identification by the shorthand reporter.)

9 MR. COLUCCI: Is there a date on that  
10 appearance?

11 THE WITNESS: It's not written on here.

12 MS. JACOBS-MEADWAY: There is probably one  
13 inside. When we run through it, I will have a date.

14 MR. COLUCCI: Without knowing the date of the  
15 particular tape that was shown, if the date is after  
16 November 19, 2001, I would object to it as not being  
17 relevant.

18 I don't know the date because I can't see it. I  
19 don't have my equipment here to view it.

20 MS. JACOBS-MEADWAY: Your point is noted. We  
21 obviously reject your contention, but we will address it  
22 with the board at the appropriate time.

23 Q Ms. Federici, do you have another tape as  
24 exemplary?

25 A Yes. This example is because of hairdressers on



1 sets in production companies that use our products  
2 suggest it. So this is actually from "Queer Eye For the  
3 Straight Guy." It is another hairdresser using our  
4 product and talking about it.

5 (Videotape played).

6 THE WITNESS: So you can see where he says it's  
7 by Sexy Hair and it's the Soy Paste. Then he  
8 demonstrates how to use it.

9 This is from "Queer Eye For the Straight Guy."  
10 This is another national syndication. Later on in this  
11 show, he actually shows the product and show him using it  
12 at the end because that's the -- the premise of this show  
13 is they teach him how to do a makeover and do the  
14 makeover, but he actually has to go through it.

15 In the end now he is doing the recipe that they  
16 taught him and -- you can see he picks the product up and  
17 uses the product.

18 Now they will complain. He shouldn't be  
19 blow-drying it because that's not what they taught him.  
20 He takes more and does it.

21 MR. COLUCCI: Before you shut it off, can we see  
22 the date on there?

23 THE WITNESS: Actually, the date is on the tape.  
24 I saw it.

25 MS. JACOBS-MEADWAY: I am going to ask the

1 reporter to mark the segment from "Queer Eye for the  
2 Straight Guy" as Opposer's Exhibit 33.

3 (Opposer's Exhibit Number 33 was marked for  
4 identification by the shorthand reporter.)

5 MR. COLUCCI: I will state my objection with  
6 respect to Exhibit 33. According to the tape, it was  
7 marked -- it says it was featured on July 24, 2003, on  
8 the show that you mentioned before.

9 I object on the grounds that it's subsequent to  
10 Victoria's Secret's filing date of its application. It's  
11 not relevant.

12 MS. JACOBS-MEADWAY: Your objection is noted.  
13 We obviously don't accept it and we will address it with  
14 the board at the appropriate time.

15 Q Please proceed, Ms. Federici.

16 A This is another case where a hairdresser that is  
17 influenced by Michael O'Rourke and our company who is a  
18 working hairdresser on a show utilizes our products and  
19 features them.

20 Only in this case he was asked to do a segment  
21 by "The View" -- the Barbara Walters' show, "The View,"  
22 where the women sit around and talk -- he did this whole  
23 thing on hot hair products.

24 And he chose Healthy Sexy Hair Soy Milk, I  
25 think, shampoo and conditioner. He talks about the

1 Q What is Regis?

2 A Regis is a corporation that owns -- my guess is  
3 23 separate concepts salon chains. And the concepts are  
4 for different demographic groups. Some of them are  
5 specific to regions. Some of them are national.

6 One of the biggest ones of the top ten products  
7 is called "Trade Secrets." The reason I say that is that  
8 it's most prominently known because it's in all the malls  
9 across America.

10 Also, Master Cuts and Super Cuts, Max and Mia,  
11 Smart Style -- those are in the Wal-Marts across America.  
12 They own the Vidal Sassoon chain. They own Jean-Louis  
13 David.

14 I think they have a portfolio of about 15,000 or  
15 16,000 chain salons or concepts that they own.

16 Another prominent chain that we do business with  
17 is JC Penney. The salons at JC Penney are, I want to  
18 say, 950 or so, maybe 1,000. And they have varying  
19 levels.

20 And in a chain that size in department stores,  
21 the amount of square footage that the salon has and the  
22 amount of dollars that they have relegates them to like a  
23 class. Like there is maybe 300 A's and there is 400 B's  
24 and maybe 250 C's. Something like that.

25 So we are in the JC Penney salons. I am in all